IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2477 OF 2005

Shri Atul Nathalal Patel ...Petitioner
Vs.
Ashmabegun Sahikh & Ors. ...Respondents

Shri M.S. Adenwala for the Petitioner.
Shri Shirish Gupte, Senior Counsel with Shri R.O.Pathak for the Respondent No.1.
Shri S.S. Tatkore, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : DECEMBER 16, 2005.

P.C.:

1. By this Petition filed under Article 227 of the Constitution of the India read with section 428 of the Code of Criminal Procedure, 1973 the following reliefs are claimed:

(a) This Hon'ble Court be pleased to set aside the order of the Metropolitan Magistrate, 22nd Court, Andheri, Mumbai in M.E.C.R.No.6 of 2004 of MIDC Police Station granting judicial custody instead of police custody and thereby grant police custody for proper investigation to MIDC Police or any other Agency, if appointed in Criminal Writ Petition No.2815.

(b) This Hon'ble Court be pleased to cancel the order granting bail to the Accused/Respondent Nos.1 and 2 in M.E.C.R. No.6 of 2004 of MIDC Police Station by the Hon'ble Sessions Court in Bail Application No.2138 of 2005.

2. This Court had initially granted ad-interim order in terms of prayer clause (c) thereby staying the order passed by the Sessions Court in M.E.C.R. No.06 of 2004 registered at MIDC Police Station. The order of the Sessions Court dated 07th October, 2005 granted bail to the Respondent Nos.1 and 2 herein.

3. The Respondent Nos.1 and 2 are added as accused because the Petitioner/original complainant filed a private complaint before the 10th Court, Metropolitan Magistrate, Andheri. He alleged serious offences being committed by the Respondent Nos.1 and 2. In as much as they filed a bogus power of attorney before the City Civil Court, Mumbai in S.C. Suit No.750 of 2001. Pursuant to the same, the consent terms were obtained in the said suit and bogus consent decree came to be obtained.

4. It is not necessary to set out further events after the said complaint was filed. The Magistrate invoked his powers under section 156(3) of the Code of Criminal Procedure, 1973. The investigation being complete, now the cognizance of the offences alleged including forgery is taken and it is not in dispute that chargesheet is filed before 22nd Court, Metropolitan Magistrate, Andheri bearing C.C.

No.4659/PW/05. This chargesheet is filed by the MIDC Police Station.

5. It is further pertinent to observe that the order passed by this Court staying the Sessions Court's bail order was later on modified by this Court on 25th October, 2005 after hearing the Petitioner as well as the learned Senior Counsel appearing for the Respondent Nos.1 and 2. This Court imposed stringent conditions on the Respondent Nos.1 and 2 after enlarging them on bail. They were directed to report every day between 04.00 p.m. to 06.00 p.m. at MIDC Police Station. They have been further directed to co-operate with the Investigating Agency. After this order was passed barring filing of an affidavit, the Petitioner has not pointed out as to how the request for cancellation of the bail granted by the Sessions Court survives. The learned Counsel appearing for the Petitioner/original complainant expressed an apprehension that the order of the learned Sessions Judge would be understood as confirming view taken by the learned Metropolitan Magistrate in this case. In other words, the Petitioner's grievance still subsists. His submission is that when the accused (Respondent Nos.1 and 2) were produced before 22nd Court, Metropolitan Magistrate, Andheri on 27th September, 2005 he straightaway passed an order

remanding them to judicial custody till 11th October, 2005. There was no police custody remand even for a single day. It is in these circumstances and further the order enlarging the accused on bail passed by the Sessions Judge that would be construed as condoning the acts of the Respondent Nos.1 and 2 as well as the lapses on the part of the investigating machinery. This would seriously prejudice the outcome of the case when one of the accused Mr. Alian Gonsalves is absconding and the original (forged) power of attorney remaining untraced.

6. After perusing the Petition and the annexures thereto as well as affidavit filed by Sub-inspector of MIDC Police Station on 20th October, 2005, in my view, this Court having enlarged the accused (Respondent Nos.1 and 2) on bail and they having reported to the concerned Police Station as directed by this Court no useful purpose will be served by scrutinising the order as also the finding of the Sessions Judge. In other words, whether the learned Judge was justified in enlarging this accused on bail. Equally, grievance that the learned Magistrate should have given police custody remand considering the seriousness of the offences also need not be gone into after this Court has passed the order on 25th October, 2005.

7. The Petitioner's Counsel was anxious and requested this Court to go into all these aspects only because in his submission the absconding accused Mr Alian Gonsalves would benefit by the aforesaid event. In my view, this apprehension is baseless. Merely because other accused have been enlarged on bail by the Sessions Judge and the Metropolitan Magistrate having not remanded them to police custody, does not mean that upon surrender and or on arrest of the absconding accused, he would be entitled to similar treatment. Ultimately, facts and circumstances pertaining to the said accused would have to be pointed out and upon independently being satisfied the Trial Court will have to pass appropriate orders in accordance with law. It is not permissible to proceed on certain assumptions when the role played by each accused in crime is not identical or is stated to be not so. This apprehension, therefore, will not survive in the light of these clarifications which I propose to issue while disposing of this Writ Petition. Hence, the following order:

: O R D E R :

i) This Writ Petition is disposed of in terms of the order passed on 25th October, 2005.

ii) The observations made by the learned Sessions Judge as also the Metropolitan Magistrate are primafacie and shall not influence the court at the trial. Equally these observations made during the course of enlarging the Respondent Nos.1 and 2 herein on bail should not influence the Metropolitan Magistrate upon surrender and/or arrest of the absconding accused Mr Alian Gonsalves as also while deciding any Application made by him for enlargement on bail.

iii) The observations made by the Sessions Court as well as the order passed by this Court would not influence the Trial Court while deciding any such Application as also while considering the merits of the case.

iv) The request made by the Respondent Nos.1 and 2 to exempt them from daily attendance at MIDC Police Station cannot be granted. However, it would be open for them to apply to the Trial Court for modification and or deletion of this condition and such request, if made, would be considered on its own merits and in accordance with law uninfluenced by the orders passed by the Court. Equally, the said request would be considered after giving opportunity to both sides to place their respective materials on record.

v) Writ Petition stands disposed of.

JUDGE